

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JEFFREY SCOTT KLINEFELTER,

Plaintiff,

v.

G. KAUR,

Defendant.

Case No. 2:20-cv-01429-DAD-JDP (PC)

ORDER DENYING PLAINTIFF'S MOTIONS  
FOR AN EXTENSION OF TIME, TO  
APPOINT COUNSEL, AND FOR JUDICIAL  
NOTICE AND AN EVIDENTIARY  
HEARING

ECF Nos. 49 & 50

Plaintiff has filed a motion for an extension of time and asks that he be appointed counsel. ECF No. 49. Plaintiff, however, does not identify the specific deadline he seeks to extend.<sup>1</sup> His motion is denied without prejudice.

Plaintiff does not have a constitutional right to appointed counsel in this action, *see Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court lacks the authority to require an attorney to represent plaintiff. *See Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S. 296, 298 (1989). The court can request the voluntary assistance of counsel. *See* 28 U.S.C. § 1915(e)(1) ("The court may request an attorney to represent any person unable to afford

<sup>1</sup> Plaintiff is reminded that pursuant to the July 12, 2022 discovery and scheduling order, all discovery must have been completed by December 16, 2022, and dispositive motions shall be filed by March 17, 2023. ECF No. 44. If plaintiff requires additional time to comply with these deadlines, he may file a motion to modify the July 12, 2022 discovery and scheduling order. Any such motion shall identify the deadline plaintiff seeks to extend and explain why additional time is necessary.

1 counsel"); *Rand*, 113 F.3d at 1525. But without a means to compensate counsel, the court will  
2 seek volunteer counsel only in exceptional circumstances. In determining whether such  
3 circumstances exist, "the district court must evaluate both the likelihood of success on the merits  
4 [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the  
5 legal issues involved." *Rand*, 113 F.3d at 1525 (internal quotation marks and citations omitted).

6 Plaintiff asks that counsel be appointed because the issues in this case are complex.  
7 ECF No. 49 at 1. I cannot conclude that exceptional circumstances requiring the appointment of  
8 counsel are present here. The allegations in the complaint are not exceptionally complicated, and  
9 plaintiff has not demonstrated that he is likely to succeed on the merits. For these reasons,  
10 plaintiff's motion to appoint counsel, ECF No. 49, is denied without prejudice.

11 Plaintiff also filed a motion for judicial notice and to set an evidentiary hearing. As an  
12 initial matter, plaintiff makes no reference to an evidentiary hearing, apart from the caption, and  
13 does not state the purpose for which he seeks such a hearing. ECF No. 50. As for his request for  
14 judicial notice, plaintiff's motion contains no documents or information for the court to take  
15 judicial notice of; instead, plaintiff appears to ask the court for discovery. For example, plaintiff  
16 asks why defendant Kaur was removed from her official capacity as the senior librarian at  
17 California State Prison, Solano. *Id.* at 1. If plaintiff intended to serve defendant with his  
18 discovery request by filing them with the court, that approach is improper. Plaintiff must instead  
19 serve his discovery requests on defendant. *See Fed. R. Civ. P. 30-36.*

20 Accordingly, it is hereby ordered that:

21 1. Plaintiff's motion for an extension of time and to appoint counsel, ECF No. 49, is  
22 denied without prejudice.

23 2. Plaintiff's motion for judicial notice and evidentiary hearing, ECF No. 50, is denied  
24 without prejudice.

25 IT IS SO ORDERED.

26 Dated: March 9, 2023

  
27 JEREMY D. PETERSON  
28 UNITED STATES MAGISTRATE JUDGE